## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

| ISMEAL COMPEAN,<br>Institutional ID No. 1813267,<br>SID NO. 8138914, | §<br>§<br>§ |                  |
|--|-------------|------------------|
|  | <b>§</b>    |                  |
| Plaintiff,   | §           |                  |
|  | §           | CIVIL ACTION NO. |
| v.   | §           | 5:16-CV-035-C    |
|  | §           |                  |
| OLIVER VASQUEZ, Lt.,   | §           |                  |
| et al.,  | §           |                  |
|  | §           |                  |
| Defendants.  | §           | ECF              |

## **ORDER**

Plaintiff, acting *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Lt. Oliver Vasquez; Sgt. Alcario Garcia, Jr.; Rafael Esquivel; Kevin Jarvis; and Dustin Spaggiari, employees of the Texas Department of Criminal Justice, Correctional Institutions Division ("TDCJ-CID") Preston Smith Unit, as Defendants. Plaintiff claims that on September 7, 2015, Defendants Jarvis, Esquivel, and Spaggiari subjected him to excessive force and that Defendants Vasquez and Garcia failed to intervene to stop said use of force in violation of the Eighth Amendment. Plaintiff seeks declaratory relief, as well as compensatory and punitive damages.

The complaint was transferred to the docket of the United States Magistrate Judge, who held a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1985), on November 3, 2016. Plaintiff consented to proceed before the United States Magistrate Judge prior to the *Spears* hearing. Following the *Spears* hearing, the Magistrate Judge found that Plaintiff had stated claims of constitutional violation sufficient to require an answer and on January 4, 2017, ordered Defendants to file answers or other responsive pleadings. On February 3, 2017, the Attorney

<sup>&</sup>lt;sup>1</sup>Plaintiff initially named three "John Doe" Defendants who were later identified as Defendants Esquivel, Jarvis, and Spaggiari.

General filed an Answer on behalf of Defendants Alcario Garcia, Jr., Oliver Vasquez, and Rafael Esquivel. On March 1, 2017, the Attorney General filed an Answer on behalf of Defendant Kevin Jarvis. Despite being personally served by the United States Marshal, Defendant Dustin Spaggiari had not filed an Answer as of the date of the Report and Recommendation; or at the time of this Order.

The Defendants failed to consent to the jurisdiction of the Magistrate Judge, and pursuant to this Court's Order entered on March 10, 2016, the Magistrate Judge entered a Report and Recommendation regarding the disposition of Plaintiff's complaint and transferred the case back to this Court on April 21, 2017. No objections to the Report and Recommendation have been filed, and the time to do so has expired.

In the Report and Recommendation, the Magistrate Judge recommended that this Court enter a scheduling order as well as a show cause order as to Defendant Spaggiari, requiring him to file an answer or other responsive pleading and show cause why he should not be held in contempt for failing to comply with the court's January 4, 2017 order to answer.

This Court has reviewed the Report and Recommendation of the United States Magistrate

Judge for clear error and finds none. The Court finds that the Report and Recommendation of the

United States Magistrate Judge should be adopted. Entry of a scheduling order will be withheld until

after entry of a separate Show Cause Order, with appropriate time for Defendant Spaggiari to file his

answer.

SO ORDERED.

Dated May 31, 2017.

SAM/R/CUNIMINGS

Senior United States District Judge